

ORIGINAL

FILED

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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

PTC

DEPUTY

JEREMY A. ROTH, Bar No. 129007
TINA M. FRYAR, Bar No. 190755
MICHELLE S. PARK, Bar No. 199224
LITTLER MENDELSON
A Professional Corporation
501 W. Broadway, Suite 900
San Diego, CA 92101.3577
Telephone: 619.232.0441

Attorneys for Defendant
PFIZER, INC.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

FERNANDO OBLITAS-RIOS, on behalf
of himself and all others similarly situated,

Plaintiff,

v.

PFIZER, INC., a California Corporation;
and DOES 1 - 100, inclusive,

Defendant.

Case No. **06 CV 2679 BTM**

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**NOTICE TO FEDERAL COURT OF
REMOVAL OF CIVIL ACTION**

Complaint filed: November 1, 2006

TO THE CLERK OF THE ABOVE-ENTITLED COURT AND TO PLAINTIFF AND HIS
ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT Defendant PFIZER, INC. ("Defendant") hereby
removes the state action described herein, filed in the Superior Court of the State of California,
County of San Diego, to the United States District Court for the Southern District of California,
pursuant to 28 U.S.C. sections 1441 and 1446. Defendant will promptly file in said Superior Court
its Notice to State Court and All Adverse Parties of Removal of Civil Action. A true and correct
copy of the Notice to state Court and All Adverse Parties of Removal of Civil Action, without its
accompanying exhibits, is attached hereto as Exhibit "A." This case is being removed based on the
existence of federal question jurisdiction.

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NOTICE TO FEDERAL COURT OF
REMOVAL

Case No. _____

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The grounds for removal are as follows:

1. On November 1, 2006, an action was commenced against Defendant in the Superior Court of the State of California, County of San Diego, entitled Fernando Oblitas-Rios, on behalf of himself and all others similarly situated vs. Pfizer, Inc., a California Corporation, and DOES 1—100, inclusive, Case No. GIC 874925.

2. Defendant was served with a copy of the Summons and a copy of the Complaint on November 10, 2006. Copies of the Summons, the Complaint, the Civil Case Cover Sheet, and the Notice of Case Assignment are attached hereto as Exhibits "B", "C", "D", and "E." These Exhibits constitute all of the papers received by Defendant in the state court action.

3. Defendant timely filed its Answer to Plaintiff's Complaint ("Answer") on December 7, 2006. A copy of its Answer is attached hereto as Exhibit "F."

4. This Notice to Federal Court of Removal of Civil Action is timely in that it is filed within thirty (30) days after Defendant was served with the Summons and Complaint. Murphy Brothers, Inc. v. Michetti Pipe Stringing, Inc., 119 S.Ct. 1322 (1999); McAnally Enterprises, Inc. v. McAnally, 107 F. Supp. 2d 1223, 1229 (C.D. Cal. 2000).

5. This action is a civil action on which this Court has original jurisdiction under 28 U.S.C. section 1331 and 1332(a)(1) and (c)(1) and is one which may be removed to this Court by Defendant pursuant to the provisions of 28 U.S.C. sections 1441 (a), (b) and (c).

6. Federal question jurisdiction exists based upon the following:

a. The Complaint ("Complaint") alleges several causes of action for failure to pay overtime wages, failure to pay minimum wages, and related causes of action under the Fair Labor Standards Act ("FLSA"), Title 29 of the United States Code sections 201 *et seq.*, California Labor Code sections 1194 and 203, and Labor Code sections 226.7 and 226. Complaint ("Compl."), *passim*. Specifically, Plaintiff alleges in his Complaint, among other things, that "... Defendants fail[ed] to pay overtime pursuant to Business & Professions Code sections 17200 *et seq.*, 29 U.S.C. sections 201 *et seq.* [the Fair Labor Standards Act ("FLSA")], Labor Code section 1194, Wage Order 4, section 3, Labor Code section ... 226.7." Compl., at ¶ 3 (emphasis added). Further, Plaintiff alleges that "[t]his is a civil action seeking recovery for Plaintiff and all Class Members of

NOTICE TO FEDERAL COURT OF REMOVAL

2. Case No. _____

overtime wages, denied meal and rest period pay, penalties for failure to comply with wage statement provisions ... under California Labor Code sections 1194 and 203, I.W.C. Wage Order 4, section 4, Labor Code section 226.7, Labor Code section 226, and 29 U.S.C. sections 201 *et seq.*, the *Fair Labor Standards Act (FLSA)*.” Compl., at ¶ 1 (emphasis added). Plaintiff alleges that “[t]he Fair Labor Standards Act, 29 U.S.C. section 201 *et seq.*, (FLSA) states that an employee must be paid overtime, equal to 1.5 times the employee’s rate of pay, for all hours worked in excess of 40 per week. This court has concurrent jurisdiction over claims involving the FLSA pursuant to 29 U.S.C. section 216(b).” Compl., at ¶ 36. Further, Plaintiff alleges that “Overtime Subclass B members regularly work more than 40 hours per week, but are not paid overtime. Subclass B members were not “exempt” under the FLSA ...” Compl., at ¶ 37.

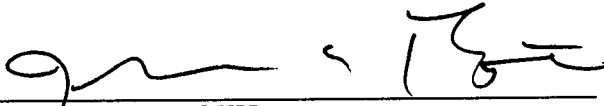
b. Because Plaintiff’s claims arise from alleged violations of federal law pursuant to 29 U.S.C. sections 201 *et seq.* and 216, this case is removable pursuant to the Court’s original jurisdiction in that this claim arises under the laws of the United States of America. 28 U.S.C. § 1441(b). In addition, supplemental jurisdiction exists over the state law claims in this action. 28 U.S.C. §§ 1367, 1441(c).

7. Venue is proper in this Court in that this is the Court of the District embracing the place where the action is pending in state court. 28 U.S.C. § 1441(a).

8. No bond is required for removal. 28 U.S.C. § 1446(d); Rezendes v. Dow Corning Corp., 717 F. Supp. 1435, 1438 n.2 (E.D. Cal. 1989).

Wherefore, Defendant PFIZER, INC. hereby removes the civil action against it in the Superior Court of the State of California, County of San Diego, to this Honorable District Court.

Dated: December 8, 2006


 JEREMY A. ROTH
 TINA M. FRYAR
 MICHELLE S. PARK
 LITTLER MENDELSON
 A Professional Corporation
 Attorneys for Defendant
 PFIZER, INC.

Firmwide: 81729948.1 051034.1019

NOTICE TO FEDERAL COURT OF
 REMOVAL

3. Case No. _____

ORIGINAL

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 701 "B" Street, #324, San Diego, California 92101. On December 8, 2006, I served the within document(s):

NOTICE TO FEDERAL COURT OF REMOVAL OF CIVIL ACTION

DEFENDANT'S NOTICE OF PARTY WITH FINANCIAL INTEREST

NOTICE OF RELATED CASES

DECLARATION OF JEREMY A. ROTH REGARDING NOTICE TO STATE COURT OF REMOVING OF CIVIL ACTION TO FEDERAL COURT

CIVIL COVER SHEET



by personally delivering a copy of the document(s) listed above to the person(s) at the address(es) set forth below.

Timothy D. Cohelan, Esq.
Isam C. Khoury, Esq.
Michael D. Singer, Esq.
COHELAN & KHOURY
605 C Street, Suite 200
San Diego, CA 92101-5305
Phone: 619.595.3001
Fax: 619.595.3000

Attorneys for Plaintiffs

Executed on December 8, 2006, at San Diego, California.



WORLDWIDE NETWORK

JEREMY A. ROTH, Bar No. 129007
TINA M. FRYAR, Bar No. 190755
MICHELLE S. PARK, Bar No. 199224
LITTLER MENDELSON
A Professional Corporation
501 W. Broadway, Suite 900
San Diego, CA 92101.3577
Telephone: 619.232.0441

Attorneys for Defendant
PFIZER, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

FERNANDO OBLITAS-RIOS, on behalf
of himself and all others similarly situated,

Plaintiff,

v.

PFIZER, INC., a California Corporation;
and DOES 1 - 100, inclusive,

Defendant.

Case No. GIC 874925

**NOTICE TO STATE COURT AND ALL
ADVERSE PARTIES OF REMOVAL OF
CIVIL ACTION**

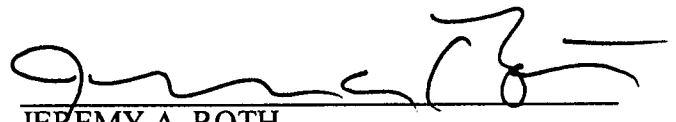
Complaint filed: November 1, 2006

1 TO THE CLERK OF THE ABOVE-ENTITLED COURT AND TO PLAINTIFF AND HIS
2 ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE THAT Defendant PFIZER, INC. filed on December 8,
4 2006, its Notice to Federal Court of Removal of Civil Action in the office of the Clerk of the United
5 States District Court for the Southern District of California pursuant to 28 U.S.C. sections 1331,
6 1332, 1441 and 1446. Copies of said notice and its accompanying exhibits are attached hereto as
7 Exhibit "1."

8 PLEASE TAKE FURTHER NOTICE THAT the filing of said notice in Federal
9 Court, together with the filing of a copy of said notice with this Court, effects the removal of this
10 action in accordance with 28 U.S.C. section 1446(d).

11 Dated: December 8, 2006

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13 
14 JEREMY A. ROTH
15 TINA M. FRYAR
16 MICHELLE S. PARK
17 LITTLER MENDELSON
18 A Professional Corporation
19 Attorneys for Defendant
20 PFIZER, INC.
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**SU MMONS
(CITACION JUDICIAL)**

SUM-100

NOTICE TO DEFENDANT:

(AVISO AL DEMANDADO):

PFIZER, INC., a California Corporation; and DOES 1-CIVIL
100, inclusive

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

CLERK OF COURT
SAN DIEGO COUNTY, CA

2006 NOV - 1 P 3:45

CLERK OF COURT
SAN DIEGO COUNTY, CA

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

FERNANDO OBLITAS-RIOS, on behalf of himself and all
others similarly situated

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

San Diego Superior Court
Hall of Justice
330 West Broadway
San Diego, CA 92101
Central

CASE NUMBER:
(Número del Caso):

GIC 874925

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Timothy D. Cohelan, Esq. SBN 60827 619-595-3001 619-595-3000
Michael D. Singer, Esq. SBN 115301
COHELAN & KHOURY, 605 C Street, Suite 200
San Diego, CA 92101

DATE:

(Fecha) **NOV 01 2006**

Clerk, by

(Secretario)

Deputy

B. MORGAN (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

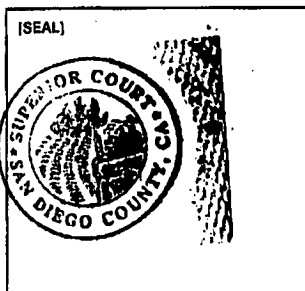
1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

- | | |
|--|---|
| under: <input type="checkbox"/> CCP 416.10 (corporation) | <input type="checkbox"/> CCP 416.60 (minor) |
| <input type="checkbox"/> CCP 416.20 (defunct corporation) | <input type="checkbox"/> CCP 416.70 (conservatee) |
| <input type="checkbox"/> CCP 416.40 (association or partnership) | <input type="checkbox"/> CCP 416.90 (authorized person) |
| <input type="checkbox"/> other (specify): | |

4. ☐ by personal delivery on (date):

Page 1 of 1



Plaintiff 11/10/06

CE/320
CA/558

CIVIL
2006 NOV -1 P 3:45

1 Timothy D. Cohelan, Esq., SBN 60827
2 Isam C. Khoury, Esq., SBN 58759
3 Michael D. Singer, Esq., SBN 115301 ✓
4 **COHELAN & KHOURY**
5 605 C Street, Suite 200
6 San Diego, CA 92101-5305
7 TEL: (619) 595-3001
8 FAX: (619) 595-3000

9 Attorneys for Plaintiff FERNANDO OBLITAS-RIOS
10 on behalf of himself and all others similarly situated

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

FERNANDO OBLITAS-RIOS, on behalf of)
himself and all others similarly situated,)

CASE NO. **GIC 874925**

CLASS ACTION COMPLAINT

Plaintiff,

1. Restitution of Overtime Wages (Bus. & Professions Code 17200, et seq.; 29 U.S.C. §§201, et seq.)

vs.

2. Restitution of Overtime Wages (I.W.C. Wage Order 4-2001)

PFIZER, INC., a California Corporation; and
DOES 1-100, inclusive,

3. Failure to Pay Overtime Wages (Labor Code §1194)

4. Restitution of Overtime Wages (Bus. & Prof. Code §§17200 et seq.)

Defendants.

5. Failure to Pay Overtime Wages (Labor Code §1194)

6. Failure to Pay Minimum Wages (I.W.C. Wage Order 4, Section 4; Labor Code §1194)

7. Failure to Provide Meal Periods (Labor Code §226.7)

8. Failure to Provide Rest Periods (Labor Code §226.7)

9. Illegal Record Keeping (Labor Code §226)

10. Unfair Business Practices (Bus. & Prof. Code §17200, et seq.)

11. Conversion

CLASS ACTION COMPLAINT

Jury Demand

1) **12. Declaratory Relief**
 2)
 3) **DEMAND FOR JURY TRIAL**
 4)

5 Plaintiff FERNANDO OBLITAS-RIOS, on behalf of himself and all others similarly
 6 situated (herein referred to as "Plaintiff"), hereby files this Complaint against Defendants
 7 PFIZER, INC. and DOES 1-100 (hereinafter collectively referred to as "Defendants" or
 8 "PFIZER"). Plaintiff is informed and believes, and on the basis of that information and belief,
 9 alleges as follows:

10 **I.**

11 **INTRODUCTION**

12 1. This is a civil action seeking recovery for Plaintiff and all Class Members of
 13 overtime wages, denied meal and rest period pay, penalties for failure to comply with wage
 14 statement provisions which are derivative of the causes action in this Complaint, and waiting
 15 time penalties, plus interest, attorneys' fees and costs under California Labor Code sections
 16 1194 and 203, I.W.C. Wage Order 4, section 4, Labor Code section 226.7, Labor Code section
 17 226, and 29 U.S.C. sections 201 et seq., the Fair Labor Standards Act (FLSA). Plaintiff, on
 18 behalf of himself and all other members of the class alleged herein, also brings an action for
 19 monetary recovery for Defendants' violations of California Business and Professions Code
 20 sections 17200, et seq., including full restitution of all compensation retained by Defendants as a
 21 result of their unlawful, fraudulent and unfair business practices, as well as injunctive relief.

22 2. Defendants operate and, at all times during the relevant time period or liability
 23 period (four years prior to the filing of the Complaint in this matter), have done business as a
 24 manufacturer of prescription drugs throughout the state of California. Defendants have, among
 25 other things, employed persons as Pharmaceuticals Representatives and/or equivalent positions
 26 to promote and market prescription drugs manufactured by PFIZER to physicians and hospitals.

27 3. Defendants' corporation manufactures prescription drugs and sells the same to
 28 physicians, hospitals, and pharmacies within the state of California and throughout the United
 States. In their endeavor, Defendants employs Pharmaceutical Representatives, to promote and
 CLASS ACTION COMPLAINT

1 market the various prescription drugs manufactured by them. At no time do the Pharmaceutical
2 Representatives directly or indirectly sell prescription drugs to physicians, hospitals, or
3 pharmacies. It is Defendants' uniform policy and procedure to pay Pharmaceuticals
4 Representatives a base salary and a bonus without premium overtime pay or denied meal and
5 rest period compensation, and in so doing Defendants fail to pay overtime pursuant to Business
6 & Professions Code sections 17200 et seq., 29 U.S.C. sections 201 et seq., Labor Code section
7 1194, Wage Order 4, section 3, Labor Code section and 226.7.

8 II.

9 JURISDICTION AND VENUE

10 4. Plaintiff FERNANDO OBLITAS-RIOS is an individual residing in the County
11 of San Diego, State of California. Plaintiff was employed by PFIZER at all times relevant
12 herein. The Plaintiff and each Class Member was an employee of Defendant PFIZER within the
13 State of California and was subject to the unlawful policies during the past four years.

14 5. Plaintiff brings this action on behalf of himself, similarly situated employees of
15 Defendant PFIZER and the public pursuant to Business and Professions Code sections 17200, et
16 seq.

17 6. At all times herein mentioned, on information and belief, Defendant PFIZER,
18 INC. was and is a corporation organized and existing under the laws of the State of California
19 and licensed to do business in California, and, in concert with other defendants, were and are
20 doing business in California, including the County of San Diego.

21 7. The California Superior Court has jurisdiction in this matter due to PFIZER's
22 violations of Labor Code sections 203, 226, 226.7, 512, and 1194, and Business and Professions
23 Code sections 17200, et seq., and related common law principles.

24 8. The California Superior Court also has jurisdiction in this matter because both
25 the individual and aggregate monetary damages and restitution sought herein exceed the
26 minimal jurisdictional limits of the Superior Court and will be established at trial, according to
27 proof. Venue as to each Defendant is proper in this judicial district, pursuant to California Code
28 of Civil Procedure sections 395 (a) and 395.5 because plaintiffs reside in San Diego County and
CLASS ACTION COMPLAINT

at least some of the acts complained of herein occurred in the County of San Diego. Each Defendant either owns, maintains offices, transacts business, has an agent or agents within the County of San Diego, has its principal place of business in the County of San Diego or otherwise is found within the County of San Diego and each Defendant is within the jurisdiction of this Court for purposes of service of process.

III. PARTIES

A. Plaintiff

9. Plaintiff FERNANDO OBLITAS-RIOS is an individual over the age of eighteen (18) and is and/or at all times mentioned in this Complaint was a resident of the state of California.

10. Plaintiff FERNANDO OBLITAS-RIOS has worked for Defendants as a California-based Pharmaceuticals Representative during the relevant time period.

11. Plaintiff FERNANDO OBLITAS-RIOS was required to work hours in excess of eight hours per day and 40 hours per week without being paid premium overtime wages and was not paid denied meal and rest period pay.

12. Plaintiff FERNANDO OBLITAS-RIOS alleges that Defendants did not maintain accurate records pursuant to Labor Code section 226(a) and seeks penalties from Defendants pursuant to Labor Code section 226(e).

13. Plaintiff FERNANDO OBLITAS-RIOS no longer works for Defendants and seeks waiting time penalties from Defendants pursuant to Defendants' violations of Labor Code section 203.

B. Defendants

14. Defendant PFIZER, INC. is now and/or at all times mentioned in this Complaint was a California Corporation qualified to do business and actually doing business in the state of California. PFIZER, INC. owns and operates an industry, business and establishment in numerous separate geographical locations within the state of California, including, but not limited to, the County of San Diego, for the purpose of manufacturing prescription drugs, and

1 selling the same to physicians, hospitals, and pharmacies within the state of California and
2 throughout the United States.

3 15. DOES 1 through 100, inclusive are now, and/or at all times mentioned in this
4 Complaint were, licensed to do business and/or actually doing business in the state of California.

5 16. The true names and capacities, whether individual, corporate, associate, or
6 otherwise, of Defendants sued herein as DOES 1 through 100, inclusive, are currently unknown
7 to Plaintiff, who therefore sues Defendants by such fictitious. Plaintiff is informed and believes,
8 and based thereon alleges, that each of the Defendants designated herein as a DOE is legally
9 responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of
10 court to amend this Complaint to reflect the true names and capacities of the Defendants
11 designated hereinafter as DOES when such identities become known.

12 17. Plaintiff is informed and believes, and based thereon alleges, that each
13 Defendant acted in all respects pertinent to this action as the agent of the other Defendants,
14 carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of
15 each Defendants are legally attributable to the other Defendants as each Defendant has ratified,
16 approved, and authorized the acts of each of the remaining Defendants with full knowledge of
17 said acts.

18 IV.

19 CLASS ACTION ALLEGATIONS

20 18. Plaintiff brings this action on behalf of himself and all others similarly situated,
21 as a class action pursuant to California Code of Civil Procedure section 382. The class which
22 Plaintiff seeks to represent is composed of and defined as follows:

23 All current and former California-based employees having a title
24 of Pharmaceutical Representative and/or other similarly
25 designated titles, who have worked for Defendant PFIZER, INC.
26 within the last four (4) years from the filing of the Complaint up
to and including the time of trial for this matter (hereafter
"Pharmaceutical Representatives").

27 19. The subclasses Plaintiff will seek to certify are currently composed of and
28 defined as follows:

CLASS ACTION COMPLAINT

a. All of Defendants' California-based Pharmaceutical Representatives who worked in excess of 8 hours per day and/or 40 hours per week during the applicable statutory period who were not paid overtime wages (hereinafter, "Overtime Subclass A");

b. All of Defendants' California-based Pharmaceutical Representatives who worked in excess of 40 hours per day week during the applicable statutory period who were not paid overtime wages (hereinafter, "Overtime Subclass B");

c. All of Defendants' California-based Pharmaceutical Representatives who Defendant mis-classified as exempt from overtime requirements during the applicable statutory period under exemptions other than the commissioned salesperson exemption ("Overtime Subclass C");

d. All of Defendants' California-based Pharmaceutical Representatives and related positions, who did not receive all meal periods or commensurate pay during the applicable statutory period (hereinafter, "Meal Period Subclass");

e. All of Defendants' California-based Pharmaceutical Representatives and related positions, who did not receive all rest periods or commensurate pay during the applicable statutory period(hereinafter, "Rest Period Subclass");

f. All of Defendants' California-based employees during the relevant time period for whom Defendants did not maintain accurate records regarding deductions and gross and net wages earned pursuant to Labor Code section 226(a) during the applicable statutory period (hereinafter, the "Illegal Records Subclass").

20. The Overtime Subclass A, Overtime Subclass B, Overtime Subclass C, Meal Period Subclass, Rest Period Subclass and Illegal Records Subclass are hereinafter collectively referred to as the "Subclasses."

21. Throughout discovery in this litigation, Plaintiff may find it appropriate and/or necessary to amend the definition of the Class or Subclasses. In any event, Plaintiff will formally define and designate a class definition at such time when Plaintiff seeks to certify the Class and Subclasses alleged herein.

1 22. **Ascertainable Class:** The proposed class and each subclass are ascertainable in
2 that their members can be identified and located using information contained in Defendants'
3 payroll and personnel records.

4 23. **Numerosity:** The potential quantity of members of the Class and Subclasses as
5 defined is so numerous that joinder of all members would be unfeasible and impractical. The
6 disposition of their claims through this class action will benefit both the parties and this Court.
7 The quantity of members of the Class and Subclasses is unknown to Plaintiff at this time,
8 however, it is estimated that each the Class and Subclasses number is well in excess of 100
9 individuals. The quantity and identity of such membership is readily ascertainable via inspection
10 of Defendants' records.

11 24. **Typicality:** The claims of Plaintiff FERNANDO OBLITAS-RIOS for overtime
12 wages, denied meal and rest period compensation, penalties, interest, and attorney's fees are
13 typical of the claims of all members of the Class and Subclasses mentioned herein because all
14 members of the Class and Subclasses sustained similar injuries and damages arising out of
15 Defendants' common course of conduct in violation of law and the injuries and damages of all
16 members of the Class and Subclasses were caused by Defendants' wrongful conduct in violation
17 of law, as alleged herein.

18 25. **Adequacy:** Plaintiff FERNANDO OBLITAS-RIOS is an adequate representative
19 of the Class and Subclasses herein, will fairly protect the interests of the members of the Class
20 and Subclasses, has no interests antagonistic to the members of the Class and Subclasses and
21 will vigorously pursue this suit via attorneys who are competent, skilled and experienced in
22 litigating matters of this type. Class Counsel are competent and experienced in litigating large
23 employment law class actions.

24 26. **Superiority:** The nature of this action and the nature of laws available to Plaintiff
25 make use of the class action format a particularly efficient and appropriate procedure to afford
26 relief to Plaintiff for the wrongs alleged herein, as follows:

27
28

1 a. This case involves large corporate Defendants and a large number of
2 individual Class Members with many relatively small claims and common issues of law and
3 fact;

4 b. If each individual member of each of the Class and Subclasses was
5 required to file an individual lawsuit, the large corporate Defendants would necessarily gain an
6 unconscionable advantage because Defendants would be able to exploit and overwhelm the
7 limited resources of each individual member of the Class and Subclasses with Defendants'
8 vastly superior financial and legal resources;

9 c. Requiring each individual member of each of the Class and Subclasses to
10 pursue an individual remedy would also discourage the assertion of lawful claims by the
11 members of the Class and Subclasses who would be disinclined to pursue an action against
12 Defendants because of an appreciable and justifiable fear of retaliation and permanent damage to
13 their lives, careers and well-being;

14 d. Proof of a common business practice or factual pattern, of which the
15 members of the Class and Subclasses experienced, is representative of the Class and Subclasses
16 herein and will establish the right of each of the members of the Class and Subclasses to recover
17 on the causes of action alleged herein;

18 e. The prosecution of separate actions by the individual members of the
19 Class and Subclasses, even if possible, would create a substantial risk of inconsistent or varying
20 verdicts or adjudications with respect to the individual members of the Class and Subclasses
21 against Defendants; and which would establish potentially incompatible standards of conduct for
22 Defendants; and/or legal determinations with respect to individual members of the Class and
23 Subclasses which would, as a practical matter, be dispositive of the interest of the other
24 members of the Class and Subclasses who are not parties to the adjudications or which would
25 substantially impair or impede the ability of the members of the Class and Subclasses to protect
26 their interests; and
27
28

1 f. The claims of the individual members of the Class and Subclasses are not
2 sufficiently large to warrant vigorous individual prosecution considering all of the concomitant
3 costs and expenses attending thereto.

4 g. Furthermore, as the damages suffered by each individual member of the
5 class may be relatively small, the expenses and burden of individual litigation would make it
6 difficult or impossible for individual members of the class to redress the wrongs done to them,
7 while an important public interest will be served by addressing the matter as a class action.

8 h. The cost to the court system of adjudication of such individualized
9 litigation would be substantial. Individualized litigation would also present the potential for
10 inconsistent or contradictory judgment.

11 i. Finally, the alternative of filing a claim with the California Labor
12 Commission is not superior, given the lack of discovery in such proceedings, the availability of
13 fewer remedies, and the fact that the losing party has the right to a trial de novo in the Superior
14 Court.

15 27. **Existence and Predominance of Common Questions of Fact and Law:** There
16 are common questions of law and fact as to the members of the Class and Subclasses which
17 predominate over questions affecting only individual members of the Class and Subclasses
18 including, without limitation:

19 a. Whether the Class Members qualify for exempt status under the inside or
20 outside salesperson exemption;

21 b. Whether the Class Members qualify for exempt status under the
22 administrative exemption;

23 c. Whether the Class Members are primarily engaged in "sales" of
24 Defendants' pharmaceutical products;

25 d. The extent to which Defendants analyzed the duties and responsibilities
26 of the Class Members before classifying them as exempt;

27 e. The number of hours per week and per day Class Members are expected
28 to work;

- 1 f. Defendants' expectations as to the duties and responsibilities of the Class
- 2 Members, and whether these expectations are reasonable under the circumstances;
- 3 g. Whether the various tasks performed by the Class Members qualify as
- 4 exempt or non-exempt tasks;
- 5 h. The number of denied meal and rest periods for Class Members over the
- 6 relevant time period and the amount of pay owing and unpaid;
- 7 i. Whether Defendants' withholding of overtime pay was willful under
- 8 the meaning of Labor Code Section 203.
- 9 j. Whether Defendants failed to keep adequate records for the members of
- 10 the Illegal Records Subclass pursuant to Labor Code 226(a) (and the consequence for such
- 11 statutory violations if Defendants did not);
- 12 k. Whether Defendants' conduct constitutes unfair competition within the
- 13 meaning of Business and Professions Code sections 17200 and 17203;
- 14 l. Whether members of the Class and Subclasses are entitled to
- 15 compensatory damages, and if so, the means of measuring such damages;
- 16 m. Whether the members of the Class and Subclasses are entitled to
- 17 injunctive relief;
- 18 n. Whether the members of the Class and Subclasses are entitled to
- 19 restitution;
- 20 o. Whether Defendants are liable for pre-judgment interest; and
- 21 p. Whether Defendants are liable for attorneys' fees and costs.

22 V.

23 CAUSES OF ACTION

24 First Cause of Action Against All Defendants
25 Labor Code Section 1194
(On Behalf of Overtime Subclass A)

- 26 28. Plaintiff incorporates all preceding paragraphs of this Complaint.

29. Pursuant to California Labor Code section 1194, Plaintiff and the Overtime Subclass A members are entitled to recover their unpaid overtime compensation for hours worked beyond 8 hours per day, 40 hours per week, plus attorneys' fees and costs, in an amount to be proved at trial.

**Second Cause of Action Against All Defendants
Unfair Competition/Restitution of Overtime Wages
(On Behalf of Overtime Subclass A)**

30. Plaintiff incorporates all preceding paragraphs of this Complaint.

31. Wage Order 4-2001, 8 C.C.R. section 11040, which applies to Defendants' business, states that an employee must be paid overtime, equal to 1.5 times the employee's regular rate of pay, for all hours worked in excess of 40 per week or 8 per day.

32. Overtime Subclass A members regularly work more than 40 hours per week and/or 8 hours per day, but are not paid overtime. Overtime Subclass A and B members are not exempt because, inter alia, they do not qualify for the commissioned sales exemption under Wage Order 4-2001, section 3(D).

33. Defendants have committed an act of unfair competition by not paying the required overtime pay to the members of Overtime Subclass A.

34. Pursuant to Bus. & Prof. Code section 17203, Plaintiff requests an order requiring Defendants to make restitution of all overtime wages due to Overtime Subclass A, in an amount to be proved at trial.

**Third Cause of Action Against All Defendants
Unfair Competition/Restitution of Overtime Wages
(On Behalf of Overtime Subclass B)**

35. Plaintiff incorporates all preceding paragraphs of this Complaint.

36. The Fair Labor Standards Act, 29 U.S.C. section 201 et seq., (FLSA) states that an employee must be paid overtime, equal to 1.5 times the employee's regular rate of pay, for all hours worked in excess of 40 per week. This court has concurrent jurisdiction over claims involving the FLSA pursuant to 29 U.S.C. section 216(b).

37. Overtime Subclass B members regularly work more than 40 hours per week, but are not paid overtime. Subclass B members were not "exempt" under the FLSA, because, inter alia, they did not sell prescription drugs, but merely promoted and marketed the prescription drugs sold by Defendant to physicians, hospitals, and pharmacies. Defendants have committed an act of unfair competition by not paying the required overtime pay to the members of Overtime Subclass B.

38. Pursuant to Bus. & Prof. Code section 17203, Plaintiff requests an order requiring Defendants to make restitution of all overtime wages due to Overtime Subclass B, in an amount to be proved at trial.

**Fourth Cause of Action Against All Defendants
Labor Code Section 1194
(On Behalf of Subclass C)**

39. Plaintiff incorporates all preceding paragraphs of this Complaint.

40. Subclass C members regularly work more than 40 hours per week and/or 8 hours per day, but are not paid overtime. Overtime Subclass C members are not exempt because, inter alia, they are production workers, they do not spend a majority of their time on exempt tasks, and they do not customarily and regularly exercise discretion and independent judgment in matters of consequence to Defendants' business.

41. Pursuant to California Labor Code section 1194, Plaintiff and the Subclass C members are entitled to recover their unpaid overtime compensation, plus attorneys' fees and costs, in an amount to be proved at trial.

**Fifth Cause of Action Against All Defendants
Unfair Competition/Restitution of Overtime Wages
(On Behalf of Overtime Subclass C)**

42. Plaintiff incorporates all preceding paragraphs of this Complaint.

43. Subclass C members regularly work more than 40 hours per week and/or 8 hours per day, but are not paid overtime. Overtime Subclass C members are not exempt because, inter alia, they are production workers, they do not spend a majority of their time on exempt tasks,

1 and they do not customarily and regularly exercise discretion and independent judgment in
2 matters of consequence to Defendants' business.

3 44. Defendants have committed an act of unfair competition by not paying the
4 required overtime pay to the members of Overtime Subclass C.

5 45. Pursuant to Bus. & Prof. Code section 17203, Plaintiff requests an order
6 requiring Defendants to make restitution of all overtime wages due to Overtime Subclass C, in
7 an amount to be proved at trial.

8
9 **Sixth Cause of Action Against All Defendants**
Failure to Provide Meal Breaks
(On Behalf of Meal Period Subclass)

10 46. Plaintiff incorporates all preceding paragraphs of this Complaint.

11 47. Defendants failed to provide the members of Class with all of their required meal
12 breaks. As a result, under Labor Code section 226.7, Plaintiff and the members of Class are
13 entitled to one additional hour's pay for each day a meal break was missed, in an amount to be
14 proved at trial.

15
16 **Seventh Cause of Action Against All Defendants**
Failure to Provide Rest Breaks
(On Behalf of Rest Period Subclass)

17 48. Plaintiff incorporates all preceding paragraphs of this Complaint.

18 49. Defendants failed to provide the members of Class with all of their required rest
19 breaks. As a result, under Labor Code section 226.7, Plaintiff and the members of Class are
20 entitled to one additional hour's pay for each day a rest break was missed, in an amount to be
21 proved at trial.

22
23 **Eighth Cause of Action Against All Defendants**
Illegal Record Keeping
(On Behalf of the Illegal Records Subclass)

24 50. Plaintiff incorporates all preceding paragraphs of this Complaint.

25 51. Labor Code section 226 requires an employer to furnish its employees with an
26 accurate itemized statement in writing showing, among other things, (1) gross wages earned, (2)
27 total hours worked by each respective individual, (3) all deductions, (4) net wages earned and/or
28

1 (5) all applicable hourly rates in effect during each respective pay period and the corresponding
2 number of hours worked at each hourly rate by each respective individual.

3 52. Therefore, pursuant to Labor Code section 226, California employers are required
4 to maintain accurate records pertaining to the total hours worked for Defendants by the members
5 of the Illegal Records Subclass, including, but not limited to, the total hours worked per pay
6 period and applicable rates of pay.

7 53. The members of the Illegal Records Subclass include all of Defendants'
8 employees for whom Defendants did not list all hours worked.

9 54. As a pattern and practice, in violation of Labor Code section 226(a), Defendants
10 did not furnish each of the members of the Illegal Records Subclass with an accurate itemized
11 statement in writing showing (1) gross wages earned, (2) total hours worked by each respective
12 individual, (3) all deductions, (4) net wages earned and/or (5) all applicable hourly rates in effect
13 during each respective pay period and the corresponding number of hours worked at each hourly
14 rate by each respective individual.

15 55. As a pattern and practice, in violation of Labor Code section 226(a), Defendants
16 did not maintain accurate records pertaining to the total hours worked for Defendants by the
17 members of the Illegal Records Subclass, including, but not limited to, beginning and ending of
18 each work period, the total daily hours worked, and the total hours worked per pay period and
19 applicable rates of pay.

20 56. Pursuant to Labor Code section 226(e), the members of the Illegal Records
21 Subclass are entitled to penalties as follows:

22 a. Fifty dollars (\$50.00) per employee for the initial pay period in which a
23 violation occurs; and

24 b. One hundred dollars (\$100.00) per employee for each violation in a
25 subsequent pay period, not to exceed \$4,000 per claimant.

26 57. Pursuant to Labor Code section 226(g), the members of the Illegal Records
27 Subclass are entitled to injunctive relief to ensure Defendants' compliance with Labor Code
28 section 226.

1 58. The members of the Illegal Records Subclass are entitled to an award of costs
2 and reasonable attorneys' fees.

3 59. Labor Code section 226(a) requires Defendants to itemize in wage statements all
4 deductions from wages of Plaintiff and the members of the proposed Class.

5 60. Defendants have knowingly and intentionally failed to comply with Labor Code
6 section 226(a) on each and every wage statement provided to Plaintiff and members of the
7 proposed subclass.

8 **Ninth Cause of Action Against All Defendants**
9 **Unfair Business Practices**
 (On Behalf of Plaintiff and the General Public)

10 61. Plaintiff incorporates all preceding paragraphs of this Complaint.

11 62. Defendants' failure to pay overtime and denied meal and rest period pay to
12 Plaintiff and members of the Class and Subclasses, under the IWC Wage Orders and under
13 California Labor Code, and failure to keep proper records, as alleged herein, constitute unlawful
14 activity prohibited by Business and Professions Code sections 17200, et seq.

15 63. The actions of Defendants in failing to pay Plaintiff and members of the Plaintiff
16 Class and Subclasses in a lawful manner, as will be further alleged herein, constitute false,
17 unfair, fraudulent and deceptive business practices, within the meaning of Business and
18 Professions Code sections 17200, et seq.

19 64. Plaintiff is entitled to an injunction and other equitable relief against such
20 unlawful practices in order to prevent future damage, for which there is no adequate remedy at
21 law, and to avoid a multiplicity of lawsuits. Plaintiff brings this cause individually and as a
22 member of the general public as a representative of all others subject to Defendants' unlawful
23 acts and practices.

24 65. As a result of their unlawful acts, Defendants have reaped and continue to reap
25 unfair benefits at the expense of Plaintiff, and the Class and Subclasses he seeks to represent.

26 66. Defendants should be enjoined from this activity and made to disgorge these ill-
27 gotten gains and restore to Plaintiff and the members of the Class and Subclasses the wrongfully
28 withheld wages and meal and rest period pay, pursuant to Business and Professions Code

1 section 17200, et seq. Plaintiff is informed and believe, and thereon alleges, that Defendants are
 2 unjustly enriched through their failure to pay overtime and minimum wages to Plaintiff and
 3 members of the Class and Subclasses.

4 67. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and members
 5 of the Class are prejudiced by Defendants' unfair trade practices.

6 68. As a direct and proximate result of the unfair business practices of Defendants,
 7 Plaintiff, individually and on behalf of all employees similarly situated, is entitled to equitable
 8 and injunctive relief, including full restitution, disgorgement, and/or specific performance of
 9 payment of all wages and pay that have been unlawfully withheld from Plaintiff and members of
 10 the Class and Subclasses as a result of the business acts and practices described herein and
 11 enjoining Defendants to cease and desist from engaging in the practices described herein.

12 69. The illegal conduct alleged herein is continuing, and there is no indication that
 13 Defendants will not continue such activity into the future. Plaintiff alleges that if Defendants are
 14 not enjoined from the conduct set forth in this Complaint, they will continue to avoid paying
 15 overtime, minimum wages, and appropriate taxes, insurance, and unemployment withholdings.

16 70. Plaintiff further requests that the court issue a preliminary and permanent
 17 injunction prohibiting Defendants to continue engaging in the practices described hereinabove.

18 **Tenth Cause of Action Against All Defendants**
 19 **Conversion**
 20 **(On Behalf of Plaintiff and the General Public)**

21 71. Plaintiff incorporates all preceding paragraphs of this Complaint.

22 72. At all relevant times herein, Defendants had a legal obligation imposed by
 23 statutory law to compensate Plaintiff and the Class and Subclasses for all of the hours worked,
 24 overtime, and minimum wages. Plaintiff has hereinbefore alleged that he and the Class were not
 25 compensated for all hours worked, overtime, minimum wages, and that such payments are due.

26 73. Defendants knowingly and intentionally failed and refused to pay for all hours
 27 worked, overtime, and minimum wages. Defendants withheld these sums and converted them
 28 by refusing to pay Plaintiff and the Class as alleged herein. Plaintiff and the Class owned or had

1 the right to own and had the legal right to hold, possess and dispose of, the withheld wages, and
 2 Plaintiff and the Class and Subclasses rely on this statutory right. Plaintiff and the Class and
 3 Subclasses gained the right to hold, possess, and dispose of the compensation as Plaintiff and
 4 the members of the Class earned these wages during the relevant time period.

5 74. Defendants knowingly, willfully and unlawfully interfered with Plaintiff's and
 6 the Class Members' rights to be compensated, and to own, possess and/or control disposition of
 7 said sums. Plaintiff is informed and believes and thereon alleges that he and each of the
 8 members of the Class were not paid overtime and minimum wages. Plaintiff and the members of
 9 the Class and Subclasses are entitled to overtime and minimum wages.

10 75. The exact amount of the unpaid wages and pay owed to Plaintiff and the
 11 members of the Class and Subclasses, and each of them, is capable of being made certain. The
 12 specific identifiable sum of money Plaintiff and the members of the Class are entitled to varies
 13 per class member and will be established at trial in an amount according to proof.

14 76. In failing to pay overtime and minimum wages, Defendants knowingly,
 15 unlawfully and intentionally took, appropriated and converted the property (wages) of Plaintiff
 16 and the Class for Defendants' own use, purposes and benefits. At the time the conversion took
 17 place, Plaintiff and the Class and Subclasses were entitled to immediate possession of the
 18 amounts of wages as they were entitled to such compensation under Labor Code sections 1194,
 19 Business and Professions Code sections 17200, et seq., I.W.C. Wage Order 4, and 29 U.S.C.
 20 §§201, et seq. Said conversion was oppressive, malicious and fraudulent, and Defendants'
 21 obligation to compensate was concealed by Defendants from the named Plaintiff and from the
 22 class membership, as hereinafter alleged. Further, Defendants knew that Plaintiff and the
 23 members of the class were, in fact, entitled to full payment of earned wages and pay, and
 24 knowingly refused payment to Plaintiff and the Class and Subclasses, and instead utilized the
 25 money they would otherwise have had to pay to Plaintiff and the Class Members for
 26 Defendants' own purposes and benefits.

27 77. Defendants have regularly and consistently maintained corporate policies and
 28 procedures that dictated and mandated that Class Members were not to be paid for overtime and

1 minimum wages. Plaintiff is informed and believes and thereon alleges that Defendants
 2 implemented and carried out the policies and procedures as alleged herein for the primary
 3 purpose of depriving Plaintiff and the Class of their right to these wages under Labor Code
 4 section 1194 such that Defendants converted said sums for their own uses, as heretofore alleged.

5 78. Plaintiff is informed and believes and thereon alleges that Class Members carry
 6 out their tasks, duties and responsibilities for Defendants in substantially similar fashion as
 7 heretofore alleged. Accordingly, Defendants have taken sums owed to Plaintiff and the Class
 8 and Subclasses and converted the same to their own use and benefit.

9 79. Plaintiff and members of the Class have been injured by said conversion through
 10 reliance on the Defendants' obligation to comply with applicable California and federal law,
 11 requiring that Defendants pay overtime and minimum wages to Plaintiff and the Class and
 12 Subclasses. Plaintiff and the Class and Subclasses are entitled to all money converted by the
 13 Defendants with interest thereon, as well as any and all profits, whether direct or indirect, which
 14 the Defendants acquired by their unlawful conversion. Furthermore, Defendants' actions
 15 constituting conversion were oppressive, malicious and fraudulent and were concealed by
 16 Defendants from the named Plaintiff and the Class Members as hereinbefore alleged. Plaintiff
 17 and the Class and Subclasses have been injured by Defendants' oppressive, malicious,
 18 intentional and fraudulent actions, entitling Plaintiff and the Class to punitive and exemplary
 19 damages.

20 80. WHEREFORE, Plaintiff and the Class and Subclasses he seeks to represent
 21 requests relief as described below.

22
 23 **Eleventh Cause of Action Against All Defendants**
(Declaratory Relief - By Plaintiff Only)

24 81. Plaintiff incorporates all preceding paragraphs of this Complaint.

25 82. An actual controversy has arisen and continues to exist between Plaintiff and
 26 Defendants in that Plaintiff contends that he was not employed in an outside sales capacity,
 27 whereas Defendants claim he was.

28

1 83. A judicial declaration is necessary and proper at this time to resolve this actual
2 controversy between Plaintiff and Defendants and to establish the respective rights and duties of
3 the parties.

4 **PRAYER FOR RELIEF**

5 PRAYER FOR RELIEF WHEREFORE, Plaintiff prays:

6 1. That the Court issue an Order certifying the Class and Subclasses herein,
7 appointing the named Plaintiff as representative of all others similarly situated, and appointing
8 the law firms representing the named Plaintiff as counsel for the members of the Class and
9 Subclasses;

10 As to the First Cause of Action for Overtime Pay:

11 2. For payment of overtime pay;
12 3. For interest as authorized by Labor Code sections 218.6 and 1194(a) and Civil
13 Code sections 3287(b) and 3289;
14 4. For an award of reasonable attorneys' fees and costs;

15 As to the Second Cause of Action for Restitution of Overtime:

16 5. For restitution of overtime pay;
17 6. For interest as authorized by Labor Code sections 218.6 and 1194(a) and Civil
18 Code sections 3287(b) and 3289;
19 7. For an award of reasonable attorneys' fees and costs;

20 As to the Third Cause of Action for Restitution of Overtime:

21 8. For restitution of overtime pay;
22 9. For interest as authorized by Labor Code sections 218.6 and 1194(a) and Civil
23 Code sections 3287(b) and 3289;
24 10. For an award of reasonable attorneys' fees and costs;

25 As to the Fourth Cause of Action for Overtime Wages:

26 11. For payment of overtime wages;
27 12. For interest as authorized by Labor Code sections 218.6 and 1194(a) and Civil
28 Code sections 3287(b) and 3289;

CLASS ACTION COMPLAINT

1 13. For an award of reasonable attorneys' fees and costs.

2 As to the Fifth Cause of Action for Restitution of Overtime:

3 14. For restitution of overtime pay;

4 15. For interest as authorized by Labor Code sections 218.6 and 1194(a) and Civil
5 Code sections 3287(b) and 3289;

6 16. For an award of reasonable attorneys' fees and costs.

7 As to the Sixth Cause of Action for Meal Period Violations:

8 17. For payment of meal period pay;

9 18. For interest as authorized by Labor Code sections 218.6 and 1194(a) and Civil
10 Code sections 3287(b) and 3289;

11 19. For an award of reasonable attorneys' fees and costs;

12 As to the Seventh Cause of Action for Rest Period Violations:

13 20. For payment of rest period pay;

14 21. For interest as authorized by Labor Code sections 218.6 and 1194(a) and Civil
15 Code sections 3287(b) and 3289;

16 22. For an award of reasonable attorneys' fees and costs;

17 As to the Eighth Cause of Action for Illegal Record Keeping:

18 23. For penalties as authorized by Labor Code section 226(e);

19 24. For injunctive relief to ensure Defendants' compliance with Labor Code section
20 226 pursuant to Labor Code section 226(g);

21 25. For an award of costs and reasonable attorneys' fees.

22 As to the Ninth Cause of Action for Unfair Business Practices:

23 26. For an accounting, under administration of Plaintiff and/or the receiver and
24 subject to Court review, to determine the amount to be returned by Defendants, and the amounts
25 to be refunded to members of the Class and Subclasses who are owed monies by Defendants;

26 27. For an Order requiring Defendants to identify each of the members of the Class
27 and Subclasses by name, home address, and home telephone number;

28

1 28. For an Order requiring Defendants to make full restitution and payment pursuant
2 to Labor Code sections 200, et seq. and 1194;

3 29. For the creation of an administrative process wherein each injured member of the
4 Class and Subclasses may submit a claim in order to receive his/her money;

5 30. For all other appropriate declaratory and equitable relief;

6 31. For interest to the extent permitted by law;

7 32. For an award of attorneys' fees and costs incurred in the investigation, filing and
8 prosecution of this action pursuant to Code of Civil Procedure section 1021.5, Business and
9 Professions Code sections 17200, et seq., Labor Code section 1194 and any other applicable
10 provision of law.

11 As to the Tenth Cause of Action for Conversion:

12 32. For the return of all sums wrongfully converted;

13 As to the Twelfth Cause of Action for Declaratory Relief:

14 33. For a Declaration of the respective rights and responsibilities of the parties;

15 As to All Causes of Action:

16 34. For penalties as authorized by Labor Code section 203;

17 35. For such other and further relief as this Court may deem just and proper; and

18 36. For reasonable attorneys' fees and costs incurred.

19 WHEREFORE, Plaintiff prays for judgment as follows:

20 1. For compensatory damages;

21 2. For restitution of all money due to Plaintiff and the Class from the unlawful
22 business practices of Defendants;

23 3. For waiting time wages under Labor Code section 203.

24 4. For punitive damages under Civil Code section 3294; and

25 5. For such other and further relief that the Court may deem just and proper.

26 ///

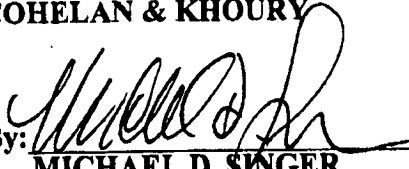
27 ///

28 ///

1 DATED: November 1, 2006

COHELAN & KHOURY

2
3 By:


MICHAEL D. SINGER
Counsel for Plaintiff

4
5 **DEMAND FOR JURY TRIAL**

6 Plaintiff hereby demands a jury trial.

7
8 DATED: November 1, 2006

COHELAN & KHOURY

9
10 By:


MICHAEL D. SINGER
Counsel for Plaintiff

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): TIMOTHY D. COHELAN, ESQ. SBN 60827 MICHAEL D. SINGER, ESQ. SBN 115301 COHELAN & KHOURY 605 C ST. SUITE 200 SAN DIEGO, CA 92101 TELEPHONE NO.: 619-595-3001 FAX NO.: 619-595-3000		FOR COURT USE ONLY CIVIL BUSINESS OFFICE 9 2006 NOV -1 P 3:47 CLERK OF SUPERIOR COURT SAN DIEGO COUNTY, CA	
ATTORNEY FOR (Name): PLAINTIFF		2006 NOV -1 P 3:47 CLERK OF SUPERIOR COURT SAN DIEGO COUNTY, CA	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO <input checked="" type="checkbox"/> HALL OF JUSTICE, 330 W. BROADWAY, SAN DIEGO, CA 92101-3827 <input type="checkbox"/> NORTH COUNTY DIVISION, 325 S. MELROSE DR., VISTA, CA 92081-8643 <input type="checkbox"/> EAST COUNTY DIVISION, 250 E. MAIN ST., EL CAJON, CA 92020-3941 <input type="checkbox"/> RAMONA BRANCH, 1428 MONTECITO RD., RAMONA, CA 92065-5200 <input type="checkbox"/> SOUTH COUNTY DIVISION, 500 3RD AVE., CHULA VISTA, CA 91910-5649			
CASE NAME: OBLITAS - RIOS V. PFIZER, INC.			
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 1811)	
		CASE NUMBER: GIC 874925 JUDGE: _____ DEPT: _____	

Items 1-5 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 1800-1812) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☒ is ☐ is not complex under rule 1800 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|---|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Type of remedies sought (check all that apply):
 a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): 1
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-018.)
- Date: 11/16/06

JASON CHAN (FOR ATTORNEY)
 (TYPE OR PRINT NAME)

[Signature]
 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 201.8.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 1800 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

INDEPENDENT CALENDAR CLERK

330 W. Broadway
San Diego, CA 92101

TO:
MICHAEL D. SINGER (P)

FILE COPY

<p>FERNANDO OBLITAS-RIOS</p> <p style="text-align: right;">Plaintiff(s)</p> <p style="text-align: center;">vs.</p> <p>PFIZER INC</p> <p style="text-align: right;">Defendant(s)</p>	<p>Case No.: GIC874925</p> <p>NOTICE OF CASE ASSIGNMENT</p> <p>Judge: JAY M. BLOOM</p> <p>Department: 70</p> <p>Phone: 619-685-6128</p>
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COMPLAINT FILED 11/01/06

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT).

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

TIME STANDARDS: The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil consists of all cases except: Small claims appeals, petitions, and unlawful detainers.

COMPLAINTS: Complaints must be served on all named defendants, and a CERTIFICATE OF SERVICE (SDSC CIV-345) filed within 60 days of filing. This is a mandatory document and may not be substituted by the filing of any other document. (Rule 2.5)

DEFENDANT'S APPEARANCE: Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than a 15 day extension which must be in writing and filed with the Court.) (Rule 2.6)

DEFAULT: If the defendant has not generally appeared and no extension has been granted, the plaintiff must request default within 45 days of the filing of the Certificate of Service. (Rule 2.7)

THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO LITIGATION, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. MEDIATION SERVICES ARE AVAILABLE UNDER THE DISPUTE RESOLUTION PROGRAMS ACT AND OTHER PROVIDERS. SEE ADR INFORMATION PACKET AND STIPULATION.

YOU MAY ALSO BE ORDERED TO PARTICIPATE IN ARBITRATION PURSUANT TO CCP 1141.10 AT THE CASE MANAGEMENT CONFERENCE. THE FEE FOR THESE SERVICES WILL BE PAID BY THE COURT IF ALL PARTIES HAVE APPEARED IN THE CASE AND THE COURT ORDERS THE CASE TO TO ARBITRATION PURSUANT TO CCP 1141.10. THE CASE MANAGEMENT CONFERENCE WILL BE CANCELLED IF YOU FILE FORM SDSC CIV-359 PRIOR TO THAT HEARING.

ALSO SEE THE ATTACHED NOTICE TO LITIGANTS.

CERTIFICATE OF SERVICE

I certify that I am not a party to the above-entitled case; on the date shown below, I served this notice on the parties shown by personally handing it to the attorney or their personal representative at SAN DIEGO
California.

DATED: 11/01/06

BY: CLERK OF THE SUPERIOR COURT

COPY

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DEC 7 2006

2006 DEC -7 P 1:41

CIVIL BUSINESS OFFICE 7
SAN DIEGO COUNTY, CA

FILED
CIVIL BUSINESS OFFICE 7
**FILE STAMP
CANCELLED**

JEREMY A. ROTH, Bar No. 129007
TINA M. FRYAR, Bar No. 190755
MICHELLE S. PARK, Bar No. 199224
LITTLER MENDELSON
A Professional Corporation
501 W. Broadway, Suite 900
San Diego, CA 92101.3577
Telephone: 619.232.0441

Attorneys for Defendant
PFIZER, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

FERNANDO OBLITAS-RIOS, on behalf
of himself and all others similarly situated,

Plaintiff,

v.

PFIZER, INC., a California Corporation;
and DOES 1 - 100, inclusive,

Defendant.

Case No. GIC 874925

**DEFENDANT'S ANSWER TO
PLAINTIFF'S COMPLAINT**

Complaint filed: November 1, 2006

Defendant PFIZER, INC. (hereinafter "Defendant") submits the following response to the unverified Complaint ("Complaint") filed by Plaintiff FERNANDO OBLITAS-RIOS ("Plaintiff").

GENERAL DENIAL

Pursuant to the provisions of Code of Civil Procedure section 431.30(d), Defendant denies generally and specifically each and every allegation contained in Plaintiff's Complaint. In addition, Defendant denies that Plaintiff has sustained, or will sustain, any loss or damage in the manner or amount alleged, or otherwise, by reason of any act or omission, or any other conduct or absence thereof on the part of Defendant.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Defendant alleges that the Complaint,

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1 and each and every alleged claim therein, fails to state facts sufficient to constitute a claim upon
2 which relief can be granted.

3 SECOND AFFIRMATIVE DEFENSE

4 As a separate and distinct affirmative defense, Defendant alleges that Plaintiff has
5 failed, refused and/or neglected to mitigate or avoid the damages complained of in the Complaint, if
6 any.

7 THIRD AFFIRMATIVE DEFENSE

8 As a separate and distinct affirmative defense, Defendant alleges that Plaintiff's
9 claims for equitable relief are barred by the doctrines of waiver, unclean hands, estoppel and/or
10 laches.

11 FOURTH AFFIRMATIVE DEFENSE

12 As a separate and distinct affirmative defense, Defendant alleges that Plaintiff is not
13 entitled to equitable relief insofar as he has an adequate remedy at law.

14 FIFTH AFFIRMATIVE DEFENSE

15 As a separate and distinct affirmative defense, Defendant alleges that the Complaint
16 and each and every claim alleged therein is barred by all applicable statutes of limitations, including
17 but not limited to, Code of Civil Procedure sections 338, 339, 340, California Business and
18 Professions Code section 17208, and 29 U.S.C. section 255, and other applicable statutes of
19 limitations.

20 SIXTH AFFIRMATIVE DEFENSE

21 As a separate and distinct affirmative defense, Defendant alleges that Plaintiff has not
22 and cannot satisfy the requirements for proceeding in a collective action under the provisions of
23 section 382 of the California Code of Civil Procedure on behalf of others "similarly situated."

24 SEVENTH AFFIRMATIVE DEFENSE

25 As a separate and distinct affirmative defense, Defendant alleges that Plaintiff and all
26 alleged potential class members have been paid and/or received all wages due to them by virtue of
27 their employment with Defendant.

28 ///

EIGHTH AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Defendant alleges that Plaintiff lacks standing to file and/or prosecute this action against Defendant and/or to receive any attorneys' fees.

NINTH AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Defendant alleges that the Complaint fails to properly state a claim for attorney's fees under California Labor Code sections 218.5 and 1194(a), California Business and Professions Code section 17200, *et seq.*, or any other basis.

TENTH AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Defendant is informed and believes and based thereon alleges that Plaintiff was treated fairly and in good faith, and that Defendant acted in good faith at all times alleged in the Complaint, and at no time did Defendant engage in unfair or deceptive business practices.

ELEVENTH AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Defendant alleges Plaintiff's alleged injuries were not proximately caused by any unlawful policy, custom, practice and/or procedure promulgated and/or tolerated by Defendant.

TWELFTH AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Defendant alleges that, assuming *arguendo*, Plaintiff is entitled to recover additional compensation on behalf of himself and/or others, Defendant has not willfully or intentionally failed to pay such additional compensation, and as such, liquidated damages should not be awarded and only a two-year statute of limitations should apply under the Fair Labor Standards Act.

THIRTEENTH AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Defendant alleges that Defendant has not willfully failed to pay Plaintiff any wages, and there is a bona fide, good faith dispute with respect to Defendant's obligation to pay any wages that may be found to be due.

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FOURTEENTH AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Defendant alleges that Plaintiff's causes of action for, or based upon, a violation of Labor Code section 226.7 fails and/or recovery is limited as a matter of law because the one-hour-of-pay remedy for meal and rest period violations is a penalty, not wages, and therefore, the claim has a one year statute of limitations under California Code of Civil Procedure Section 340(a).

FIFTEENTH AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Defendant alleges that Plaintiff does not, and cannot, fairly and adequately represent the interests of the purported class.

SIXTEENTH AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Defendant alleges that Plaintiff's claim for penalties is barred because Defendant acted in good faith and reasonably believed that its conduct was lawful.

SEVENTEENTH AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Defendant alleges that certification of a class, as applied to the facts and circumstances of this case, would constitute a denial of Defendant's procedural rights and right to trial by jury and to substantive and procedural due process, in violation of the Fourteenth Amendment of the United States Constitution and the Due Process and Equal Protection Clauses of the California Constitution.

EIGHTEENTH AFFIRMATIVE DEFENSE

As a separate and distinct affirmative defense, Defendant alleges that this suit may not be properly maintained as a class action because: (1) Plaintiff has failed to plead, and cannot establish, the necessary procedural elements for class treatment; (2) a class action is not an appropriate method for the fair and efficient adjudication of the claims described in the Complaint; (3) common issues of fact or law do not predominate and, to the contrary, individual issues predominate; (4) Plaintiff's claims are not representative or typical of the claims of the putative class; (5) Plaintiff is not a proper class representative; (6) Plaintiff and his counsel of record are not adequate representatives for the alleged putative class; (7) Plaintiff cannot satisfy any of the

1 requirements for class action treatment, and class action treatment is neither appropriate nor
2 constitutional; (8) there is not a well-defined community of interest in the questions of law or fact
3 affecting Plaintiff and the members of the alleged putative class; (9) the alleged putative class is not
4 ascertainable, nor are its members identifiable; and (10) to the extent that the alleged putative class is
5 ascertainable and its members are identifiable, the number of putative class members is too small to
6 meet the numerosity requirement for a class action.

7 NINETEENTH AFFIRMATIVE DEFENSE

8 As a separate and distinct affirmative defense, Defendant alleges that the adjudication
9 of the claims of the putative class through generalized classwide proof violates Defendant's rights to
10 a trial by jury guaranteed by the United States and California Constitutions.

11 TWENTIETH AFFIRMATIVE DEFENSE

12 As a separate and distinct affirmative defense, Defendant alleges that Plaintiff cannot
13 recover lost wages, penalties or other monetary remedies under Business and Professions Code
14 section 17200 *et seq.*

15 TWENTY-FIRST AFFIRMATIVE DEFENSE

16 As a separate and distinct affirmative defense, Defendant alleges that Plaintiff is not
17 entitled to an award of prejudgment interest if he prevails on any or all of his claims.

18 TWENTY-SECOND AFFIRMATIVE DEFENSE

19 As a separate and distinct affirmative defense, Defendant alleges that the Complaint
20 fails to properly state facts sufficient to entitle Plaintiff or putative class members to any relief,
21 including, but not limited to, its failure to properly state facts sufficient to identify any actual or
22 threatened harm to Plaintiff beyond pure speculation, its failure to allege facts showing that Plaintiff
23 has no adequate remedy at law, and its proposal of relief that would impose an undue burden on both
24 Defendant and the Court and be so uncertain as to be wholly unenforceable.

25 TWENTY-THIRD AFFIRMATIVE DEFENSE

26 As a separate and distinct affirmative defense, Defendant alleges that Plaintiff has
27 failed to allege sufficient facts to state a claim upon which punitive damages may be awarded.

28 ///

1 TWENTY-FOURTH AFFIRMATIVE DEFENSE

2 As a separate and distinct affirmative defense, Defendant opposes class certification
3 and dispute the propriety of class treatment. If the Court certifies a class in this case over
4 Defendant's objections, then Defendant asserts the affirmative defenses set forth herein against each
5 and every member of the certified class.

6 ADDITIONAL DEFENSES

7 Defendant does not presently know all facts with respect to the conduct alleged by
8 Plaintiff sufficient to state all affirmative defenses at this time. Defendant reserves the right to
9 amend this Answer should it later discover facts demonstrating the existence of additional
10 affirmative defenses.

11 WHEREFORE, Defendant prays that:

- 12 1. The Complaint be dismissed in its entirety with prejudice and Plaintiff take
13 nothing by his Complaint;
- 14 2. Judgment be entered against Plaintiff and in favor of Defendant;
- 15 3. Defendant be awarded its costs of suit and reasonable attorneys' fees incurred
16 herein; and
- 17 4. The Court award Defendant such other and further relief as it deems
18 appropriate.

19 Dated: December 7, 2006

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21 

22 JEREMY A. ROTH
23 TINA M. FRYAR
24 MICHELLE S. PARK
25 LITTLER MENDELSON
26 A Professional Corporation
27 Attorneys for Defendant
28 PFIZER, INC.

PROOF OF SERVICE

2006 DEC -7 P 1:41

**FILE STAMP
CANCELLED**

I am a resident of the State of California, over the age of _____ years, and not a party to the within action. My business address is 501 W. Broadway, Suite 900, San Diego, California 92101.3577. On December 7, 2006, I served the within document(s):

DEFENDANT'S ANSWER TO PLAINTIFF'S COMPLAINT

- ☐ by facsimile transmission at or about _____ on that date. This document was transmitted by using a facsimile machine that complies with California Rules of Court Rule 2003(3), telephone number 619.232.4302. The transmission was reported as complete and without error. A copy of the transmission report, properly issued by the transmitting machine, is attached. The names and facsimile numbers of the person(s) served are as set forth below.
- ☒ by placing a true copy of the document(s) listed above for collection and mailing following the firm's ordinary business practice in a sealed envelope with postage thereon fully prepaid for deposit in the United States mail at San Diego, California addressed as set forth below.
- ☐ by depositing a true copy of the same enclosed in a sealed envelope, with delivery fees provided for, in an overnight delivery service pick up box or office designated for overnight delivery, and addressed as set forth below.
- ☐ by personally delivering a copy of the document(s) listed above to the person(s) at the address(es) set forth below.

Timothy D. Cohelan, Esq.
Isam C. Khoury, Esq.
Michael D. Singer, Esq.
COHELAN & KHOURY
605 C Street, Suite 200
San Diego, CA 92101-5305
Phone: 619.595.3001
Fax: 619.595.3000

Attorneys for Plaintiffs

I am readily familiar with the firm's practice of collection and processing correspondence for mailing and for shipping via overnight delivery service. Under that practice it would be deposited with the U.S. Postal Service or if an overnight delivery service shipment, deposited in an overnight delivery service pick-up box or office on the same day with postage or fees thereon fully prepaid in the ordinary course of business.

1 I declare under penalty of perjury under the laws of the State of California that the
2 above is true and correct. Executed on December 7, 2006, at San Diego, California.

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KILSHA A. CASTRO

The JS 44 civil cover sheet and the information contained hereon neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

FERNANDO OBLITAS-RIOS, on behalf of himself and all others similarly situated

DEFENDANTS

PFIZER, INC., a California Corporation; and DOES-1-100

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed

06 DEC 8 AM 11:56

(IN U.S. PLAINTIFF CASES ONLY) COURT
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION FOR THE
LAND INVOLVED.

Attorneys (If Known)

JEREMY A. ROTH, Bar No. 129007

TINA M. FRYAR, Bar No. 190755

MICHELLE S. PARK, Bar No. 199224

501 West Broadway, Suite 900

San Diego, CA 92101-3577

Tel. (619) 232-0441

Fax: (619) 232-4302

DEPUTY

06 CV 2679 BTM

POR

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- PTF DEF**
- Citizen of This State ☒ 1 ☐ 1 Incorporated or Principal Place of Business In This State ☐ 4 ☐ 4
- Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal Place of Business In Another State ☐ 5 ☒ 5
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT		TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury—Med. Malpractice	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment	
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury—Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust	
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	PROPERTY RIGHTS	<input type="checkbox"/> 430 Banks and Banking	
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	PERSONAL PROPERTY	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce	
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation	
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 660 Occupational Safety/Health	SOCIAL SECURITY	<input type="checkbox"/> 480 Consumer Credit	
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 490 Cable/Sat TV	
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury		LABOR	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 810 Selective Service	
<input type="checkbox"/> 190 Other Contract			<input checked="" type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 850 Securities/Commodities/Exchange	
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410	
<input type="checkbox"/> 196 Franchise			<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 890 Other Statutory Actions	
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	<input type="checkbox"/> 740 Railway Labor Act	FEDERAL TAX SUITS	<input type="checkbox"/> 891 Agricultural Acts	
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 892 Economic Stabilization Act	
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	Habeas Corpus:	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 893 Environmental Matters	
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 530 General			<input type="checkbox"/> 894 Energy Allocation Act	
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty			<input type="checkbox"/> 895 Freedom of Information Act	
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other			<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice	
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights			<input type="checkbox"/> 950 Constitutionality of State Statutes	
	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 555 Prison Condition				

V. ORIGIN

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
29 USC §§ 201, et seq.

Brief description of cause:

FLSA Classification Claims

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$**

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S)
IF ANY

(See instructions):

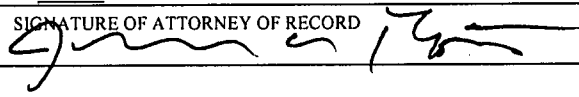
JUDGE

DOCKET NUMBER

DATE

12/8/06

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

UNITED STATES
DISTRICT COURT
Southern District of California
San Diego Division

132634 - A1
December 8, 2006

Code	Case #	Qty	Amount
07086900	3-06-CV-2679		60.00 CH
	Judge - MOSKOWITZ		
07086400			100.00 CH
07510000			190.00 CH

Total-> 350.00

FROM: CIVIL FILING
FERNANDO OBLITAS-RIOS V.
PFIZER INC
BCN 288406 SH